

SUZANNA DENTEL,	:	Order Dismissing Appeal
Appellant	:	
	:	
v.	:	Docket No. IBIA 97-37-A
	:	
PORTLAND AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	November 25, 1997

Appellant Suzanna Dentel joined in an appeal from an August 26, 1996, decision issued by the Portland Area Director, Bureau of Indian Affairs (Area Director; BIA). In general, the Area Director's decision adjusted rental rates for residential/recreational leases along Pull and Be Damned Road on the Swinomish Indian Reservation.

With regard to Appellant, the August 26, 1996, decision states at pages 2-3:

Three of the 22 original appellants, \* \* \* [including present Appellant and the appellants in Kerwin v. Portland Area Director, 31 IBIA 276 (1997), and Johns v. Portland Area Director, 31 IBIA 279 (1997)], failed to post a bond as required, and we dismissed their appeals. These dismissal actions were not appealed to the [Board] within the requisite time frame and are, therefore, final for the Department. In your Statement of Reasons you indicate that these \* \* \* appellants request that " \* \* \* the Portland Area Director reconsider the \* \* \* prior decisions and consider them with the remainder of the present appeals." Since these individuals did not comply with the bonding requirements as agreed upon, and did not appeal the bonding decisions, we will not consider their appeals now.

By order dated October 9, 1996, the Board requested a copy of the Area Director's earlier dismissal. The Area Director provided copies of two letters, one dated November 27, 1995, and the other dated November 30, 1995. The November 27, 1995, letter affirmed a May 30, 1995, decision of the Superintendent, Puget Sound Agency, BIA (Superintendent), which cancelled Appellant's lease for failure to pay the annual rental which was due on September 1, 1994. The Area Director stated at page 2 of that letter: "[P]ursuant to 25 C.F.R. § 2.6(a), we are making our decision effective immediately." The letter then informed Appellant of her right to appeal the decision to the Board and stated that "[i]f no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal." Id. at 3.

The Area Director's November 30, 1995, letter responded to an appeal from Appellant and other individuals who were seeking review of rental rate adjustments made by the Superintendent to take effect on September 1, 1995. The Area Director's November 30, 1995, letter stated at page 2: "Since [Appellant's] lease has been canceled we have determined that the appeal pertaining to the rental adjustment, effective September 1, 1995, is moot. We are therefore dismissing the appeal which was filed on March 29, 1995, protesting the rental increase." Again, this letter notified Appellant of both her right to appeal to the Board and of the consequences of failing to file a timely notice of appeal.

The Board did not receive a notice of appeal from Appellant in regard to either the November 27 or November 30, 1995, decision.

Initially, the Board notes that, as it stated in Wallace v. Aberdeen Area Director, 26 IBIA 150, 153 (1994), a BIA Area Director lacks authority to place his own decision into immediate effect. The question of whether an Area Director's decision should be placed into immediate effect must be raised to the Board, as the forum with authority to review the Area Director's decision. However, in distinction from the situation in Wallace, the Area Director here further notified Appellant of the right to appeal his decision.

Appellant could possibly have argued--but has not--that it was unclear whether she was required to appeal from the Area Director's November 27, 1995, letter. However, she cannot argue lack of clarity in the Area Director's November 30, 1995, letter. Appellant failed to appeal either decision, although she was informed that the consequences of failing to appeal were that the Area Director's decision would be final for the Department.

The Area Director's November 27 and 30, 1995, decisions do not support the statement in his August 26, 1996, decision that Appellant's earlier appeal(s) had been dismissed for failure to post a bond. <sup>1/</sup> Rather, they show that Appellant's lease was cancelled for failure to pay rent. The Board finds it unnecessary to address this discrepancy because, whether or not Appellant received an additional dismissal decision for failure to post a bond, she was notified of her right to appeal from the November 27 and November 30, 1995, decisions. When she did not do so, the cancellation of her lease for failure to pay rent became final for the Department in December 1995.

Appellant's appeal from the Area Director's August 26, 1996, decision can only be viewed as an attempt to file an untimely appeal from the November 27 and 30, 1995, decisions.

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<sup>1/</sup> A July 19, 1995, letter from counsel for Appellants to the Area Director states that the three lessees who failed to increase their bonds were Julie Kerwin, Miles Johns, and John Huffman.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from the Portland Area Director's August 26, 1996, decision is dismissed as an untimely attempt to appeal from the Area Director's November 27 and 30, 1995, decisions.

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Kathryn A. Lynn  
Chief Administrative Judge

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Anita Vogt  
Administrative Judge